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Filing date: **08/16/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91195630
Party	Defendant Golden Spirits L.L.C.
Correspondence Address	GOLDEN SPIRITS L.L.C. GOLDEN SPIRITS L.L.C. 407 E LOUISIANA DR STE 101 MCKINNEY, TX 75069 UNITED STATES free2rumm@yahoo.com
Submission	Answer
Filer's Name	mark Golden
Filer's e-mail	free2rumm@yahoo.com
Signature	/mark golden/
Date	08/16/2010
Attachments	trademarkanw2.pdf ( 11 pages )(64406 bytes )

Trademark Trial and Appeal Board Electronic Filing System. <http://estta.uspto.gov>

ESTTA Tracking number: ESTTA357492

Filing date: 07/12/2010

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

### Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name Million Beverage, LLC

Granted to Date

of previous  
extension

07/10/2010

Address 17105 Kenton Place, Suite 207-C

Cornelius, NC 28031

UNITED STATES

Attorney Albert P. Allan

information Allan Law Firm, PLLC

409 East Boulevard

Charlotte, NC 28203

UNITED STATES

[AlAllan@AllanIPLitigation.com](mailto:AlAllan@AllanIPLitigation.com) Phone: 704-371-5605

### Applicant Information

Application No 77626383 Publication date 05/11/2010

Opposition Filing

Date

07/12/2010 Opposition

Period Ends

07/10/2010

Applicant Golden Spirits L.L.C.

Ste 101 407 E Louisiana Dr

Mckinney, TX 75069

UNITED STATES

Goods/Services Affected by Opposition

Class 033. First Use: 2008/10/01 First Use In Commerce: 2008/11/01

All goods and services in the class are opposed, namely: Vodka

Grounds for Opposition

Priority and likelihood of confusion Trademark Act section 2(d)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration

No.

3273606 Application Date 10/09/2006

Registration Date 08/07/2007 Foreign Priority

Date

NONE

Word Mark MILLION

Design Mark

Description of

Mark

NONE

Goods/Services Class 005. First use: First Use: 2006/06/29 First Use In

Commerce: 2006/06/29

Vitamin, mineral, nutrient, amino acid and/or herb fortified beverages in the nature of an alcohol recovery drink, hangover minimizer, and hangover suppressant beverage formulated to reduce and minimize the effects of alcohol consumption

U.S. Application

No.

77747632 Application Date 05/29/2009

Registration Date NONE Foreign Priority Date

NONE

Word Mark MILLION

Design Mark

Description of Mark

NONE

Goods/Services Class 030. First use: Teas

U.S. Application

No.

77747620 Application Date 05/29/2009

Registration Date NONE Foreign Priority Date

NONE

Word Mark FEEL LIKE A MILLION

Design Mark

Description of NONE Mark

Goods/Services Class 030. First use: Teas

U.S. Registration

No.

3281477 Application Date 10/09/2006

Registration Date 08/21/2007 Foreign Priority  
Date

NONE

Word Mark \$

Design Mark

Description of  
Mark

The mark consists of dollar sign in clear black-and-white without claiming color.

Goods/Services Class 005. First use: First Use: 2006/06/29 First Use In  
Commerce: 2006/06/29

Vitamin, mineral, nutrient, amino acid and/or herb fortified beverages in  
the

nature of an alcohol recovery drink, hangover minimizer, and hangover  
suppressant beverage formulated to reduce and minimize the effects of  
alcohol

consumption

U.S. Application

No.

77747747 Application Date 05/29/2009

Registration Date NONE Foreign Priority  
Date

NONE

Word Mark \$

Design Mark

Description of NONE  
Mark

Goods/Services Class 030. First use:

Teas

Attachments 77017038#TMSN.jpeg ( 1 page )( bytes )  
77747632#TMSN.jpeg ( 1 page )( bytes )  
77747620#TMSN.jpeg ( 1 page )( bytes )  
77017053#TMSN.jpeg ( 1 page )( bytes )  
77747747#TMSN.jpeg ( 1 page )( bytes )  
100712 Opposition.pdf ( 3 pages )(53059 bytes )

### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature /Albert P. Allan/  
Name Albert P. Allan  
Date 07/12/2010

### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

MILLION BEVERAGE, LLC, )  
)  
Opposer, )  
)  
v. ) Opposition No. \_\_\_\_\_  
)  
GOLDEN SPIRITS, LLC, )  
)  
Applicant. )

### NOTICE OF OPPOSITION

Applicant, Golden Spirits, LLC (“Million Vodka”), a Texas limited liability corporation with a business address at 400 Eldorado Parkway,

Mckinney, Texas 75070 hereby owns registration of the mark MILLION VODKA that is the subject of application Serial No. 77626383,  
published May 11, 2010 in class 33.

As grounds in support of approval of Notice of Allowance, Opposer Million asserts the following: GOLDEN SPIRITS LLC ANSWERS WILL FOLLOW

1. Opposer Million, for many years and since long prior to the date of first use alleged by Applicant Golden Spirits, LLC (“Golden Spirits”), has adopted and has continuously used the term “MILLION” as a trademark for an alcohol recovery drink, hangover minimizer beverage, and hangover suppressant beverage formulated to reduce and minimize the effects of alcohol consumption, and as a trademark for tea.

As for Opposer's tea product. Million Beverage has filed a completely new mark for the tea Application #Serial Number: 77747632 Million for class 30 coffee, tea, sugar, flour etc.

The opposer's (intent to use) application for the mark, ‘MILLION’ was submitted to the USPTO on May 29, 2009. However, we have submitted our application for “MILLION VODKA” on December 4, 2008 and began using the mark with relation to its vodka product on November 1, 2008. Therefore, while your client may have used the “MILLION” mark on a limited basis in commerce with respect to green tea, it did not use the

mark in commerce with relation to the “energy drink,” or "Alcohol"

which you now claim will be likely to cause confusion in the marketplace with Golden Spirits’ MILLION VODKA.

Courts have found that it is not a registration that provides protection, but it is the use of the mark with relation to such goods.

“It is elementary that a registrant has rights under the statute only with respect to goods on which the trademark has been used. Trademark ownership results only from use, not from registration. “Jean Patou, Inc. v. Theon, Inc., 9 F.3d 971, 29 U.S.P.Q.2d 1771 (Fed.Cir. Nov 17, 1993) (NO. 80,345, 93-1204). To this extent, we agree that your intent to use the mark, “MILLION” on an “energy drink or Beverages,” may be likely to cause confusion with our use of the mark, MILLION VODKA on our vodka.

2. Opposer Million, for many years and since long prior to the date of first use alleged by Applicant Golden Spirits, has adopted and has continuously used the term “FEEL LIKE A MILLION” as a trademark for an alcohol recovery drink, hangover minimizer beverage, and hangover suppressant beverage formulated to reduce and minimize the effects of alcohol consumption, and as a trademark for tea.

THIS MARK "feel like a million" HAS NOTHING TO DO WITH GOLDEN SPIRITS LLC, GOLDEN SPIRITS HAS NEVER AND WILL NOT EVER USE THIS MARK IN ANY CAMPAIGN.



3. Opposer Million, for many years and since long prior to the date of first use alleged by Applicant Golden Spirits, has adopted and has continuously used the term “\$” as a trademark for an alcohol recovery drink, hangover minimizer beverage, and hangover suppressant beverage formulated to reduce and minimize the effects of alcohol consumption, as and as a trademark for tea.

THIS MARK "\$" HAS NOTHING TO DO WITH GOLDEN SPIRITS LLC, GOLDEN SPIRITS HAS NEVER AND WILL NOT EVER USE THIS MARK IN ANY CAMPAIGN.

4. Opposer Million is the owner of Registration No. 3273606, by assignment from Sperling, Inc. on April 20, 2009, for the mark “MILLION” for an alcohol recovery drink, hangover minimizer beverage, and hangover suppressant beverage formulated to reduce and minimize the effects of alcohol consumption, which is valid and subsisting. THE DATE OF OPPOSER MILLION Registration No. 3273606

CLASS 005.  
Pharmaceuticals

Pharmaceutical, veterinary, and sanitary preparations; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides. Therefore, this registered mark for, “MILLION” does not relate to Opposer Million use of the mark on “energy drinks or Green Teas” and affords no protection.

5. Opposer Million is the owner of Registration No. 3281477, by assignment from Sperling, Inc. on April 20, 2009, for the mark “\$” for an alcohol recovery drink, hangover minimizer beverage, and hangover suppressant beverage formulated to reduce and minimize the effects of alcohol consumption, which is valid and subsisting.

AGAIN THIS MARK "\$" HAS NOTHING TO DO WITH GOLDEN SPIRITS LLC, GOLDEN SPIRITS HAS NEVER AND WILL NOT EVER USE THIS MARK IN ANY CAMPAIGN.

6. Applicant filed an application to register the mark “MILLION VODKA” for vodka, an alcoholic beverage, on December 4, 2008, which was subsequently assigned Serial No. 77626383.

Correct.

7. Applicant’s mark so resembles Opposer’s previously used and registered marks that the use and registration thereof by Applicant is likely to cause confusion, mistake, or deception within the meaning of Section 2(d) of the Trademark Act.

WHEREFORE, Opposer believes it will be damaged by registration of Applicant’s mark and prays that the opposition be sustained and that registration be refused.

Opposer Million has claimed Million Beverage has used this mark, “consistently, extensively and prominently in interstate commerce for several years,” and that this use had resulted in the mark(s) becoming,

“well known in the beverage industry.” However, after reviewing Million Beverage, LLC’s (“Million Beverage”) website located on the web at [www.drinkmillion.com](http://www.drinkmillion.com), it appears that the only beverage Million Beverage has begun selling or promoting commercially is the green tea. Moreover, based on this website, this green tea is only sold in a handful of gas stations, convenience stores and grocery stores primarily in the North Carolina area.

Recently a "customer" sent Opposer "Million (Mr. Brandon Sperling President and Owner) an email inquiring about how to purchase "Million" "Alcohol hangover product" and The Opposer "Million (Mr. Brandon Sperling himself) responded "ONLY THE TEA ARE AVAILABLE FOR RETAIL AND YOU CAN GET THE HANGOVER PRODUCT DIRECTLY FROM ME” We have this email for evidence. ( Exhibit A)

That does not sound like the Opposer "Million has established their mark Registration No. 3273606 in the Class 005

Pharmaceutical industry let alone the Alcohol or any Beverage industry. So according to Opposer "Million' The “Million Hangover product” is NOT even available to customer in ANY retail establishment.

Therefore, it would be hard to argue that this is a well-developed brand or trademark, such that it is “well-known in the beverage industry” for any particular good, let alone, green tea or any other beverage. This mark is certainly not well known to the consuming public and as such, Opposer "Million can’t lay claim to this mark for use in any industry let alone the WHOLE beverage industry.

Date: July 13, 2010

Respectfully submitted,

Applicant Golden Spirits, LLC

By:Mark Golden

President/CEO

Million Vodka

[MG@millionvodka.com](mailto:MG@millionvodka.com)

